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January 20, 2023

**BY ECF**

United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007-1312  
Attn: Honorable Denise L. Cote

**Re: Fortessa Qorrolli v. MDA et al (18CV6836)(DLC)(OTW)**

Dear Judge Cote,

I am the attorney for the Defendants in the above referenced action. It is with regret that I have been forced to raise these issues to the Court. This correspondence shall serve as Defendants' motion for sanctions and/or for a protective order, directing the Plaintiff's attorneys to remove or modify their description of this action on the firm's website, pursuant to the Court's inherent power to sanction a party's attorneys. Defendants object to the same as it is intentionally misleading as to finality, and is potentially polluting the jury pool for a new trial. A copy of said posting is attached herewith as Exhibit 1.

As you know, a jury trial of this matter was conducted before your honor from October 24 through 28, 2022. The jury returned a verdict in favor of Plaintiff which precipitated the Plaintiff's counsel immediately posting their version of that non-final verdict on their website. Thereafter, this Court considered post-trial motions and entered an Order granting a new trial specifically identifying the legal and evidentiary issues which lead to the Court's Order for a new trial. Now, the parties are preparing for the re-trial of this matter for February 6, 2023, pursuant to Your scheduling order.

The Court's inherent power is "a power born of the practical necessity that courts be able 'to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 71, 78 (2d Cir. 2000). This power may be

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exercised where the attorney has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258-59, 95 S. Ct. 1612, 44 L. Ed. 2d 141 (1975) (internal quotation marks omitted).

Defendants believe that Plaintiff's attorneys' description of this case on the firm's website is both intentionally misleading, falsely marketing that misinformation, and attempting to pollute the jury pool for the upcoming retrial in this matter. The wording in the "update" section at the bottom of the Plaintiff's counsel's website posting fails to capture both the breath and tenor of this Court's ruling on Defendants' post-trial motion. Although the Court extensively discussed the shortcomings of Plaintiff's proofs at trial in that Decision, Plaintiff's attorneys' website only contains a very short statement indicating that due to evidentiary issues a new trial has been ordered, and then outright suggests, or implies, that Plaintiff will obtain an even larger award from the jury in the retrial. Given the widespread reporting about the first trial in this matter, it is intentionally misleading, and in violation of Rule 7.1(a)(1) of the New York Professional Rules of Conduct.

In addition, the misleading statement on Plaintiff's attorneys' website is polluting the jury pool for the upcoming retrial of this matter. The undersigned has reached out to Plaintiff's counsel on numerous occasions since the verdict about the aforementioned issues to no avail.

For the above reasons, we believe that Defendants have already prejudiced the jury pool and thereby seek relief, including but not limited to, forcing Plaintiff's attorneys to make a disclosure on their website that their prior publication was inappropriate and misleading, removal of the posting, striking Plaintiff's jury demand, for sanctions under the Court's inherent power, and/or for a referral of these matters to the New York State Bar Association for further review.

Thank You for Your time and attention. Kindly direct any questions to the undersigned.

Respectfully yours,

/s/

David C. Wims, Esq. (DW-6964)

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Cc: Honorable Ona T. Wang (By ECF)  
Zack Holzberg, Esq. (By ECF)  
Derek Smith, Esq. (By ECF)  
Stephen Bergstein (By ECF)  
Mark Gilwit, Esq. (By ECF)